

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Merwin H. Alferness et al.  
Serial No. : 10/667,029  
Filed : September 18, 2003  
For : METHODS AND APPARATUS FOR  
ALLOCATING BANDWIDTH FOR A NETWORK  
PROCESSOR  
Examiner : TANH Q NGUYEN  
Group Art Unit : 2182  
Confirmation No. : 9131  
Customer No. : 46628

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO THE DIRECTOR UNDER 37 CFR § 1.181**

Sir:

This Petition is responsive to the Notification of Non-Compliant Appeal Brief mailed December 31, 2009 (hereinafter *Notification*). This Petition is being timely filed within two months of the mailing of the Notification.

Initially, it is respectfully noted that this is the second such notification concerning the same issue. It is further initially noted that the Notification is raising an issue that was already substantively decided in favor of Applicants.

In the Notification, the Examiner summarizes his concerns as follows: "Essentially, appellant provides citations that support claims with a different scope than the pending claims..." *Notification*, page 2, sixth paragraph. A copy is filed herewith for reference.

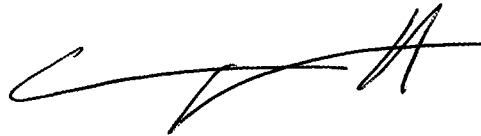
It is respectfully submitted that the Notification is improperly treating a substantive issue -- under which Applicants are entitled by law to judicial review -- as a procedural issue. Specifically, the Notification is raising an enablement issue under 35 USC 112 as a procedural non-compliance issue. The question of support in the specification being different in scope than that of the claims is essentially an enablement question.

Further, the Examiner **previously withdrew such an enablement rejection** under 35 USC 112. See Amendment filed December 17, 2007 and Office Action mailed March 20, 2008 (in which the same basic enablement issue was withdrawn by the Examiner). Both of these items are filed herewith for reference.

In view of the above, Applicants respectfully petition the commissioner to consider the Appeal Brief compliant.

Applicants do not believe that any additional fees are due regarding this Petition. However, if any additional fees are required, please charge Deposit Account No. 04-1696.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Christopher P. Mitchell', with a stylized flourish at the end.

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Dated: March 1, 2010  
Hawthorne, New York